

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

PAUL R. O'BRIEN,)
) C.A. No. K11A-01-001 JTV
Appellant,)
)
v.)
)
RETRO CAFÉ NONE INVOLVED)
and UNEMPLOYMENT)
INSURANCE APPEAL BOARD,)
)
Appellees.)

Submitted: May 19, 2011
Decided: August 31, 2011

Paul R. O'Brien, *Pro Se.*

Retro Café, *Pro Se.*

Upon Consideration of Appellant's
Appeal From Decision of the
Unemployment Insurance Appeal Board
AFFIRMED

VAUGHN, President

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ORDER

Upon consideration of the appellant's brief and the record of the case, it appears that:¹

1. The appellant/claimant, Paul O'Brien, was employed as head chef at the Retro Café from June 2010 until August 5, 2010. On August 5, 2010 he left his employment due to ongoing problems with his back and changes in work conditions.

2. The claimant contends that when he accepted the employer's job offer he was promised the assistance of three cooks on weekdays and four cooks on weekends. He contends that thereafter three of the cooks resigned, the employer refused to hire replacements, and he was required to train a young and unqualified dishwasher. He contends that he had to serve an average of approximately 200 customers per day. He contends that these circumstances required him to be on his feet eight or nine hours per day, and that he has had back problems since the 1980's. He contends that under these circumstances he voluntarily left his employment for good cause.

3. The Board determined that the claimant failed to establish that he voluntarily left his employment for good cause. In doing so, the Board affirmed the decision of the Appeals Referee. It is clear from a reading of the Board's decision that it had reservations about the claimant's credibility. In particular, it observed that the claimant had not made the above-mentioned contentions consistently through the course of the proceedings and that the contentions were uncorroborated. It further

¹ The appellee declined to file a brief.

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observed that the claimant asserted his contentions concerning changed working conditions for the first time before the Board. A reading of the Appeals Referee's decision confirms this conclusion.

4. The claimant further contends that the Board ignored binding precedent set by a previous case which he had in 2009. He contends that the Board improperly failed to give due regard for the precedent set in its prior decision. Finally, the claimant also contends that the Board had no justification for stating that "[t]he claimant was discharged from his work with just cause" because there was no evidence presented that he was discharged by the employer.²

5. When reviewing decisions from the Board, the court is limited to consideration of the record which was before the administrative agency.³ The court must determine whether the findings and conclusions of the Board are free from legal error and are supported by substantial evidence in the record.⁴ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁵ The court does not weigh the evidence, determine questions

² *O'Brien v. Retro Café*, No. 40545834, at *3 (Del. U.I.A.B. Dec. 14, 2010).

³ *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

⁴ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at *2 (Del. Super. 1997); 19 Del. C. § 3323(a) ("In any judicial proceeding under this section, the findings of the [UIAB] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

⁵ *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

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of credibility, or make its own factual findings.⁶ The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.⁷

6. Under 19 *Del. C.* § 3314(1), a person is not entitled to unemployment benefits if that person resigns from a job voluntarily without good cause. Good cause is "such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."⁸ It may include circumstances where there is a substantial reduction in wages or hours, as well as a substantial deviation in working conditions.⁹ Additionally, the phrase voluntarily quit means leaving on one's own accord as opposed to being discharged.¹⁰

7. First, the claimant's claim that the Board failed to follow binding precedent is without merit. The claimant relied upon a 2009 decision made by a Claims Deputy and argued that this case had precedential influence over the Board. In the claimant's prior case, a Claims Deputy held that the claimant voluntarily quit

⁶ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁷ *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. 2003); see 19 *Del. C.* § 3323(a) (providing that, absent fraud, the factual findings of the Board shall be conclusive and the jurisdiction of a reviewing court shall be confined to questions of law).

⁸ *O'Neal's Bus Serv. v. Employment Security Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970)(citing *Zielenski v. Bd. of Review*, 85 N.J.Super. 46, (1964); see also *Deamond v. GPM Investments, LLC*, 2011 WL 532173, *2 (Del. Super. Feb. 11, 2011).

⁹ *Hopkins Constr. v. UIAB*, 1998 WL 960713 (Del. Super. 1998).

¹⁰ *Gsell v. Unclaimed Freight*, 1995 WL 339026 (Del. Super. 1995).

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his employment for good cause attributable to his work. The claimant was employed for six weeks when he resigned from that job. At the hearing before the Claims Deputy, he presented medical documentation, dated several weeks after he quit, which indicated that he was totally disabled when he left his employment. In this prior case, the Claims Deputy held that the claimant voluntarily resigned with good cause.

8. A decision made by a Claims Deputy can be appealed by either party to an Appeals Referee. An appeal from an Appeals Referee's decision then goes to the Board. The Board determines the credibility of witnesses, the weight of evidence, the proper inferences to be drawn, and then decides whether the claimant has met his burden of persuasion that he voluntarily left his employment for good cause. In making this determination, the Board is not bound by decisions of an inferior officer made in a prior case. Therefore, the claimant's contention that the Board ignored binding precedent is without merit.

9. The Board's decision is free from legal error and supported by substantial evidence in the record. During the claimant's hearing before the Board he only peripherally mentioned his ongoing medical issues, which is the main focus of the claimant's brief on appeal. The claimant's primary argument before the Board was that there was a change in working conditions because the restaurant had several cooks resign, leaving him with the assistance of only an unqualified dishwasher. The Board, however, accredited this argument very little weight because they determined that the argument was not credible. In doing so, the Board stated: "there is no record of [the cooks leaving], and the Board, at this late stage, is unable to afford this

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allegation weight sufficient to sustain a finding that the Claimant left his employment because of a material, detrimental change in his conditions.”¹¹ The Court believes that this holding is supported by the record, and is free from legal error.

10. I also find that the Board did not err in its implicit rejection of the claimant’s contention that he voluntarily left employment for good cause as a result of his prior back injury. During his hearing before the Board in this case, the claimant offered into evidence four pages of medical records dated July and August of 2009. Additionally, the claimant’s doctor filled out the “Claimant’s Authorization for Release of Information/Doctor’s Certificate,” at the beginning of this litigation, in which the doctor listed work limitations that he would suggest and made a conclusory statement that the claimant was unable to perform the duties required in his current job. The doctor, however, provided no support for these conclusions and did not testify before the Board. This opinion was not rendered until two weeks after the claimant resigned, and the doctor stated that the claimant was not advised to quit his job with the Retro Café for health reasons. The Appeals Referee, who was affirmed by the Board, found that the claimant was disqualified, in part, because he did not provide the employer with medical documentation to substantiate his back injury. Therefore, a thorough review of the record shows that the claimant failed to produce credible medical evidence during the hearing before the Board, that he was unable to continue his employment due to health reasons.

11. Finally, the claimant’s next contention, that the Board wrongfully found

¹¹ *O'Brien*, No. 40545834 at *2.

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that he was discharged from work without just cause, also lacks merit. A review of the Board's decision below shows that this was merely a harmless misstatement. The Board analyzed the claim in detail as to whether the claimant left work voluntarily without just cause. Subsequently, it stated, that: "the Board finds that the Claimant has failed to meet his burden of production ... that he voluntarily left his employment ... for good cause."

12. After considering the record, I find that the findings and conclusions made by the Board below are free from legal error and supported by substantial evidence in the record. Therefore, the decision below is ***affirmed***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr
President Judge

cc: Prothonotary
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